

R277. Education, Administration.

R277-203. Request for Licensure Reinstatement and Reinstatement Procedures.

R277-203-1. Authority and Purpose.

[A.](1) This rule is authorized ~~[under]~~by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board[;];

(b) ~~[by]~~Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures[;]; and

(c) ~~[by]~~Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

[B.](2) The purpose of this rule is to establish procedures regarding educator license reinstatement.

[C.](3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-203-2. Application for Licensing Following Denial or Loss of License.

[A](1)(a) An individual who has been denied a license or lost the individual's license through suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request a review to consider reinstatement of a license.

([2]b) A request for review described in Subsection ~~[R277-203-2A]~~(1)(a) shall:

([a]i) be in writing;

([b]ii) be transmitted to the UPPAC Executive Secretary; and

([c]iii) have the following information:

([i]A) name and address of the individual requesting review;

([ii]B) the action being requested;

([iii]C) specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the Board;

([iv]D) reason(s) that the individual seeks reinstatement; and

([v]E) signature of the individual requesting review.

[B]([1]2)(a) The Executive Secretary shall review the request with UPPAC.

([2]b) If UPPAC determines that the request is incomplete or invalid:

([a]i) the Executive Secretary shall deny the request; and

([b]ii) notify the individual requesting reinstatement of the denial.

([3]c) If UPPAC determines that the request of an individual described in Subsection ~~[R277-203-2A](1)~~ is complete, timely, and appropriate, UPPAC shall schedule and hold a hearing as provided under Section R277-203-3.

[C]([1]3)(a) Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking the reinstatement.

([2]b) An individual requesting reinstatement of a suspended license shall:

([a]i) show sufficient evidence of compliance with any conditions imposed in the past disciplinary action;

([b]ii) provide sufficient evidence to the reinstatement hearing panel that the educator will not engage in recurrences of the actions that gave rise to the suspension and that reinstatement is appropriate;

([c]iii) undergo a criminal background check ~~[consistent with Utah law and R277-517]~~not more than six months prior to the requested hearing; and

([d]iv) provide materials for review by the hearing panel that demonstrate the individual's compliance with directives from UPPAC or the Board found in petitioner's original stipulated agreement or hearing report.

([3]c) An individual requesting licensing following a denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.

[D]([4]) An individual whose license has been suspended or revoked in another state shall seek reinstatement of the individual's license in the other state before a request for a reinstatement hearing may be approved.

R277-203-3. Reinstatement Hearing Procedures.

59 ~~[A.]~~(1) A hearing officer shall:
60 ~~([1]~~a) preside over a reinstatement hearing; and
61 ~~([2]~~b) rule on all procedural issues during the reinstatement hearing as they
62 arise.
63 ~~[B.]~~(2) A hearing panel, comprising individuals as set forth in Subsection
64 ~~[R277-202-3(B)]~~(2), shall:
65 ~~([1]~~a) hear the evidence; and
66 ~~([2]~~b) along with the prosecutor and hearing officer, question the individual
67 seeking reinstatement regarding the appropriateness of reinstatement.
68 ~~[C.]~~(3) An individual seeking reinstatement may:
69 (a) be represented by counsel; and
70 (b) may present evidence and witnesses.
71 ~~[D.]~~(4) A party may present evidence and witnesses consistent with Rule
72 R277-202.
73 ~~[E.]~~(5) A hearing officer of a reinstatement hearing shall direct one or both
74 parties to explain the background of a case to panel members at the beginning of
75 the hearing to provide necessary information about the initial misconduct and
76 subsequent UPPAC and Board action.
77 ~~[F.]~~(6) An individual seeking reinstatement shall present documentation or
78 evidence that supports reinstatement.
79 ~~[G.]~~(7) The USOE, represented by the UPPAC prosecutor, shall present any
80 evidence or documentation that explains and supports USOE's recommendation in
81 the matter.
82 ~~[H.]~~(8) Other evidence or witnesses may be presented by either party and
83 shall be presented consistent with Rule R277-202.
84 ~~[I.]~~(9) The individual seeking reinstatement shall:
85 ~~([1]~~a) focus on the individual's actions, rehabilitative efforts, and performance
86 following license denial or suspension;
87 ~~([2]~~b) explain item by item how each condition of the hearing report or
88 stipulated agreement was satisfied;

89 ([3]c) provide documentation in the form of evaluations, reports, or plans, as
90 directed by the hearing report or stipulated agreement, of satisfaction of all required
91 and outlined conditions;

92 ([4]d) be prepared to completely and candidly respond to the questions of the
93 UPPAC prosecutor and hearing panel regarding:

94 ([a]i) the misconduct that caused the license suspension;

95 ([b]ii) subsequent rehabilitation activities;

96 ([e]iii) counseling or therapy received by the individual related to the original
97 misconduct; and

98 ([d]iv) work, professional actions, and behavior between the suspension and
99 reinstatement request;

100 (5)e) present witnesses and be prepared to question witnesses (including
101 counselors, current employers, support group members) at the hearing who can
102 provide substantive corroboration of rehabilitation or current professional fitness to
103 be an educator;

104 ([6]f) provide copies of all reports and documents to the UPPAC prosecutor
105 and hearing officer at least five days before a reinstatement hearing; and

106 ([7]g) bring eight copies of all documents or materials that an individual
107 seeking reinstatement plans to introduce at the hearing.

108 [J-](10) The UPPAC prosecutor, the hearing panel, and hearing officer shall
109 thoroughly question the individual seeking reinstatement as to the individual's:

110 ([1]a) underlying misconduct which is the basis of the sanction on the
111 educator's license;

112 ([2]b) specific and exact compliance with reinstatement requirements;

113 ([3]c) counseling, if required for reinstatement;

114 ([4]d) specific plans for avoiding previous misconduct; and

115 ([5]e) demeanor and changed understanding of petitioner's professional
116 integrity and actions consistent with Rule R277-515.

117 [K-](11) If the individual seeking reinstatement sought counseling as described
118 in Subsection [R277-203-3J(3)](10)(c), the individual shall state, under oath, that he

119 provided all relevant information and background to his counselor or therapist.

120 ~~[L.](12)~~ A hearing officer shall rule on procedural issues in a reinstatement
121 hearing in a timely manner as they arise.

122 ~~[M.](13)~~ No more than 20 days following a reinstatement hearing, a hearing
123 officer, with the assistance of the hearing panel, shall:

124 ~~[(1)a]~~ prepare a hearing report in accordance with the requirements set forth
125 in Section R277-203-5; and

126 ~~[(2)b]~~ provide the hearing report to the UPPAC Executive Secretary.

127 ~~[N.](14)~~ The Executive Secretary shall submit the hearing report to UPPAC
128 at the next meeting following receipt of the hearing report by the Executive
129 Secretary.

130 ~~[O.](15)~~ UPPAC may do the following upon receipt of the hearing report:

131 ~~[(1)a]~~ accept the hearing panel's recommendation as prepared in the hearing
132 report;

133 ~~[(2)b]~~ amend the hearing panel's recommendation with conditions or
134 modifications to the hearing panel's recommendation which shall be:

135 ~~[(a)i]~~ directed by UPPAC;

136 ~~[(b)ii]~~ prepared by the UPPAC Executive Secretary; and

137 ~~[(c)iii]~~ attached to the hearing report; or

138 ~~[(3)c]~~ reject the hearing panel's recommendation.

139 ~~[P.](16)~~ After UPPAC makes a recommendation on the hearing panel report,
140 the UPPAC recommendation will be forwarded to the Board for final action on the
141 individual's reinstatement request.

142 ~~[Q. If the Board denies an individual's request for reinstatement, the individual~~
143 ~~shall wait at least twenty four (24) months prior to filing a request for reinstatement~~
144 ~~again, unless a different time is provided in the hearing panel recommendation or in~~
145 ~~the Board's motion to deny.]~~

146 **R277-203-4. Rights of a Victim at a Reinstatement Hearing.**

147 ~~[A.](1)~~ If the allegations that gave rise to the underlying suspension involve

abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to notify the victim or the victim's family of the reinstatement request.

[B-](2) UPPAC's notification shall:

([1]a) advise the victim or the victim's family that a reinstatement hearing has been scheduled;

([2]b) notify the victim or the victim's family of the date, time, and location of the hearing;

([3]c) advise the victim or the victim's family of the victim's right to be heard at the reinstatement hearing; and

([4]d) provide the victim or the victim's family with a form upon which the victim can submit a statement for consideration by the hearing panel.

[C-](3) A victim entitled to notification of the reinstatement proceedings shall be permitted:

([1]a) to attend the hearing; and

([2]b) to offer the victim's position on the educator's reinstatement request, either by testifying in person or by submitting a written statement.

[D-](4) A victim choosing to testify at a reinstatement hearing shall be subject to reasonable cross examination in the hearing officer's discretion.

[E-](5) A victim choosing not to respond in writing or appear at the reinstatement hearing waives the victim's right to participate in the reinstatement process.

R277-203-5. Reinstatement Hearing Report.

[A-](1) A hearing officer shall provide the following in a reinstatement hearing report:

([1]a) ~~[provide-]~~ a summary of the background of the original disciplinary action;

([2]b) ~~[provide-]~~ adequate information, including summary statements of evidence presented, documents provided, and petitioner's testimony and demeanor for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation

177 since petitioner's original disciplinary action;

178 ~~[(3)c] [specifically address]~~the hearing panel's conclusions regarding
179 petitioner's appropriateness and fitness to be a public school educator again;~~[-and]~~

180 (d) the hearing panel's recommendation; and

181 ~~[(4)e] [provide-]~~a statement [that]indicating whether the hearing panel's
182 recommendation to UPPAC was unanimous or [provide]identifying how the panel['s]
183 member's voted concerning reinstatement.

184 ~~[B]([1]2)(a)~~ The hearing panel report is a public document under GRAMA
185 following the conclusion of the reinstatement process unless specific information or
186 evidence contained therein is protected by a specific provision of GRAMA, or
187 another provision of state or federal law.

188 ~~[(2)b]~~ The Executive Secretary shall add the hearing panel report to the
189 UPPAC case file.

190 ~~[E-](3)~~ If a license is reinstated, an educator's CACTUS file shall be updated
191 to:

192 ~~[(1)a]~~ remove the flag;

193 ~~[(2)b]~~ show that the educator's license was reinstated; and

194 ~~[(3)c]~~ show the date of formal Board action reinstating the license.

195 ~~[D-](4)(a)~~ UPPAC and the Board shall follow the procedures described in
196 Subsection R277-202-12(7) when considering a reinstatement hearing report.

197 ~~(b)~~ The Board decision as to whether to accept the recommendation of the
198 reinstatement hearing report is within the Board's sole discretion.

199 ~~[(b) An educator has an expectation of due process, but no expectation of~~
200 ~~license reinstatement by the Board.]~~

201 ~~(5)~~ If the Board denies an individual's request for reinstatement, the individual
202 shall wait at least twenty four (24) months prior to filing a request for reinstatement
203 again, unless a different time is specified by UPPAC or the Board.

204 ~~(6)~~ If the Board reinstates an educator, the Executive Secretary shall:

205 ~~(a)~~ update CACTUS to reflect the Board's action; and

206 ~~(b)~~ report the Board's action to the NASDTEC Educator Information Clearing

house.

(7) The Executive Secretary shall send notice of the Board's decision no more than 30 days following Board action to:

(a) the educator;

(b) the educator's LEA.

R277-203-6. Reinstatement from Revocation of License.

(1) The Executive Secretary shall deny any request for a reinstatement hearing for a revoked license unless the educator's stipulated agreement or revocation order from the Board allows the educator to request a reinstatement hearing.

(2) An educator may request that the Superintendent order a new hearing if:

(a) an educator provides:

(i) evidence of mistake or false information that was critical to the revocation action; or

(ii) newly discovered evidence:

(A) that undermines the revocation determination; and

(B) that the educator could not have reasonably obtained during the original disciplinary proceedings; or

(b) an educator identifies material procedural Board error in the revocation process.

(3) A request for review by the Superintendent must be filed within 30 days of Board action for circumstances identified in Subsection (2)(a)(i) or (b).

(4) A request for review by the Superintendent must be filed within 90 days of discovery of the new evidence for circumstances identified in Subsection(2)(a)(ii).

(5) The Superintendent:

(a) shall make a determination on a request made under Subsection(2) within 60 days; and

(b) may request briefing from an educator and USOE staff in making a determination.

236 (6) If the Superintendent finds that the criteria in Subsection (2)(a) have been
237 established, the Superintendent shall direct UPPAC to conduct a new hearing
238 consistent with Rule R277-202.

239 (7) If the Superintendents finds that the criteria in Subsection (2)(b) have been
240 established, the Superintendent shall recommend to the Board that they reconsider
241 their previous action.

242 **KEY: licensure, reinstatement, hearings; license reinstatement**

243 **Date of Enactment or Last Substantive Amendment: [~~July 8,~~]2015**

244 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-**
245 **1-401(3)**